

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

IN RE:

Case No. 08-67234

JOSEPH K. FRENCH and  
SANDRA L. FRENCH,

Chapter 7

Judge Thomas J. Tucker

Debtors.

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**MEMORANDUM CONCLUDING THAT 11 U.S.C. § 727(a)(9)  
DOES NOT PRECLUDE A DISCHARGE OF JOINT DEBTOR  
SANDRA L. FRENCH IN THIS CHAPTER 7 CASE**

This case is before the Court for review under 11 U.S.C. § 727(a)(9). The Joint Debtor in this case, Sandra L. French, also was a joint debtor in a previous bankruptcy case. The previous case was filed in this Court under Chapter 13 of the Bankruptcy Code, on February 7, 2003 (Case No. 03-30565). Debtor Sandra L. French, then known as Sandra Lynn Ciemerych, received a Chapter 13 discharge in the previous case, on December 3, 2007 (Docket # 52 in Case No. 03-30565).<sup>1</sup>

The current Chapter 7 case was filed on November 5, 2008, less than six years after the previous Chapter 13 case was filed. For that reason, the Court has reviewed the previous case, to determine whether the Debtor, Sandra L. French, is barred by 11 U.S.C. § 727(a)(9) from receiving a discharge in this Chapter 7 case. That section provides:

§ 727. Discharge

(a) The Court shall grant the debtor a discharge, unless—

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<sup>1</sup> The joint debtors in the Chapter 13 case were Stanley Paul Ciemerych and Sandra Lynn Ciemerych.

(9) the debtor has been granted a discharge under section 1228 or 1328 of this title, or under section 660 or 661 of the Bankruptcy Act, in a case commenced within six years before the date of the filing of the petition, unless payments under the plan in such case totaled at least—

(A) 100 percent of the allowed unsecured claims in such case; or

(B)(i) 70 percent of such claims; and

(ii) the plan was proposed by the debtor in good faith, and was the debtor's best effort;

11 U.S.C. § 727(a)(9).

Upon review of Case No. 03-30565, the Court finds that payments under the confirmed plan in that case totaled at least 70% of the allowed unsecured claims,<sup>2</sup> and that the confirmed plan in that case was proposed by the debtors in good faith, and was the debtors' best effort.

Accordingly, the Court concludes that 11 U.S.C. § 727(a)(9) does not preclude the Debtor, Sandra L. French, from receiving a Chapter 7 discharge in this case.

**Signed on February 27, 2009**

/s/ Thomas J. Tucker  
**Thomas J. Tucker**  
**United States Bankruptcy Judge**

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<sup>2</sup> According to the Trustee's Final Report and Account, filed on November 2, 2007 in Case No. 03-30565 (Docket # 50), payments under the confirmed plan totaled 73.16% of the allowed unsecured claims.